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**Subject:** Opinions under the Bombay Revenue Tribunal Act, 1939

**File No.** O B.R.T/42

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The expression "the records of the Tribunal" has not been defined in the Bombay Revenue Tribunal Records Inspection, Search and Copies Regulations. Consequently "the records of the TRibunal" must be construed in its ordinary sense and would ~~xxx include~~ not include the records of other authorities, etc. the Collector or the Commissioner before whom the matter under appeal might have been agitated before (cf. Order XLI, rule 13(2) of the Civil Procedure Code and the rules in Chapter XII of the Civil Manual issued by the High Court of Bombay). The question as to what papers would or would not be included in the records of the Tribunal would, however, be immaterial in determining a party's right to inspect or to obtain a copy of any public document in thecustody of the Secretary, Bombay Revenue Tribunal. In India there is no separate enactment except the provisions of section 76 of the Indian Evidence Act with regard to the means of obtaining an inspection or copy of public documents, Section 76 provides for the granting of certified copies of public documents which a person has the right to inspect. But it has nowhere been laid down how the right o inspection of public documents is to be regulated. The right to obtain a certified copy seems to presuppose the right to inspect. But a right of inspection does not necessarily carry with it the right to take copies (see. Sarkar's Evidence Act, 8th Edition, page 613). In the case of public documents not falling under sections 123 and 124 of Indian Evidence Act, ~~xix Xxiixxx~~ i.e. except in the case of documents relating to affairs of State or containing ~~xx~~ offici communications, section 76 will be applicable and it will be f the Secretary to the Tribunal to decide in each particular cas whether the document in question is a public document or not and whether the party concerned is entitled to inspection or c thereof. Copies can only be granted from or with reference to original documents and consequently there ~~x~~ could not arise any question of granting copies of "extracts from the Records of Right, Village forms and the like," which S.C.

would themselves be extracts or copies from other originals. In the case of sanads as well as Government Resolution or Government Memoranda relied on by the Collector and the Commissioner passing the order appealed against, it will as pointed out above, be necessary for the Secretary to the Tribunal to decide the question relating to the right of inspection and copies with reference to the facts and contents of the particular document concerned and the party seeking inspection or copy thereof.

Remembrancer of Legal Affairs,

U.R.to Secretary, B.R.T,,no. 905 dated the 31st January 1942.

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Office of the R.L.A.

This reference is in connection with the B.R.T.'s order dated 2nd October 1940. It is now proposed by Government that instead of ejecting the ~~appellant~~ appellant and paying him compensation, the encroachment should be allowed to stand if the public street will not be seriously affected The A.(R) desires that the Tribunal should be informed that Government has adopted this alternative, because ~~it~~ it thinks it is a better course than the payment of compensation which raises a very far-reaching precedent; that such compensation as a matter of right has never been made in the past and is contrary to the advice given by Government's le Advisers from time to time; and that compensation has been paid in rare cases in the past as an exgratia payment and Government would have been prepared to accept a recommendation of the Tribunal to such ex gratia payment. The question for the consideration of the R.L.A. is whether this information to the Tribunal would amount to "Contempt of Court". The R.L.A. is also requested to advise on the point of Government being more strongly represented in such cases hereafter.

2. The Bombay Revenue Tribunal is not a civil Court and is not subordinateto the High Court. The contempt of the Tribunal, if any, could not therefore be punished under the provisions of the Contempts of Courts Act, 1926 (cf. section 2(1) of that Act). The Tribunal would however be a Revenue Court and as such would have considerable powers of dealing with contempt under section 476, ~~x Rexxxxx~~ and 4 of the Criminal Procedure Code, 1898. Under section 476, a Revenue Court can record a finding and make a complaint to a Magistrate of the I Class having juridiction, of the commission in or in relation to proceedings in that Court of offences punishable under section 193, 194, 195, 196, 19

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200, 205, 206, 207, 208, 209, 210, 211 and 228 I.P.C. or an offence described in section 463 or punishable under section 471, sec. 475 or 476 of the I.P.C. Also section 480 empowers such Court to punish offences described in sects. 175, 178, 179, 180 or 228 I.P.C. if committed in the view or presence of such Court. Of the offences above referred to only that mentioned in section 228 I.P.C. need be considered for the purpose of this reference. That section makes it an offence to intentionally offer any insult or to cause any interruption to any public servant, while such public servant is sitting in any state of a judicial proceeding. The proposed action in this case clearly does not fall under section 228 I.P.C. The Tribunal could not take action under section 478 and 480 of the Criminal Procedure Code. Nor in any case would the tribunal be likely to regard such an intimation as contempt of court. It does not amount to disobedience of the Court's orders. It does not flout the Tribunal's authority. So far as contempt of court is concerned there would be no risk in sending such an intimation to the Criminal.

3. As regards the better legal representation it may be pointed out that it is possible to engage the Advocate General, Bombay in <u>really important cases</u>. If Govt. approve of this idea, the Advocate General will be consulted and the method of determining what cases has to appear thought out and what fees he should be ~~paid~~ paid settled.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 4513 dated the 1st June 1942.

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Office of the R.L.A.:

In order to secure that Government's view is properly represented before the Tribunal, this Department issues to the Government Pleader a brief containing detailed instructions and he is also supplied by the R.D. with copies of all relevant documents. The procedure inthis behalf is laid down in Government Circular, R.D.No. 3724/29, dated the 16th August 1941. The brief is prepared and sent as soon as possible after the Collector's report and the paper of the case are received in this Department. Therefore unless the Collector's report is inordinately delayed the Government Pleader receives the brief and the documents a considerable time before the date of the hearing so as to enable him to study the case with care.

2. As regards the actual representation before the Tribunal it has been the practice of the Legal Department recently to require the Government Pleader, High Court himself to appear irrespective of the place at which the Tribunal sits, and it is only when the Government Pleader is engaged in important work in the High Court that he has been permitted to transfer the Tribunal cases to the Assistant. Moreover, since April last year, the Personal Assistant to the R.L.A. (who is responsible for the preparation of the briefs). has been frequently deputed to attend the sitting of the Tribunal both at Bombay and Poona, to assist the Government Pleader, High Court whenever a request was made by him in that behalf. (The particular case under consideration was conducted by the Assistant Government pleader and as no request was made by him in that behalf th Personal Assistant did not attend the hearing). It does no appear therefore that representation of Government's cases before the Tribunal leaves anything to be desired. The present practice may be modified to some extent on the following lines. Henceforth briefs in Bombay Revenue Tribunal cases will be prepared in Legal Department i.e. by the Personal Assistant to the Remembrancer of Legal

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Affairs with the aid of an Assistant Secretary in Revenue Department well versed in revenue matters. In view of his other duties Mr.B.G.Rao, the present Government Pleader (High Court) will not be able to cope with Bombay Revenue Tribunal work to th new Assistant Government Pleader (High Court) who is an able lawyer and ~~xitx~~ will be instructed to make a special study of Revenue law. In intricate cases he should be given the assistance of the Assistant Secretary, Revenue Department and if need be able of the personal Assistant.

It does not appear necessary or possible to give the Assistant Government Pleader the assistance of another Advocate, for it does not appear that there is any Advocate who has ~~xxxxifixd~~ specialised in land revenue law and procedure.

Sd/- P.N.M.
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Remembrancer of Legal Affairs,

U.R. to R.D. No. 418 confl. dated the 23rd September 1942.

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No. B.R.T.702(O-58)
Bombay Revenue Tribunal.
Bombay Castle, 27th April 1942.

From

The Secretary, Bombay Revenue Tribunal;

To

Nichhathai Vallabhbhai Desai, Esquire.

Subject.-Non-agricultural assessments Surat
Vapi, taluka Bulsar.
Levy of ... at enhanced rates on
certain lands at,

Sir,

With reference to your application dated 13th September 1940 for reconsideration of the order conveyed to you in letter No.6757-B/33/7342, dated 15th December 1937, I am directed to forward a copy of order No.O-58 of 1942, dated 21st February 1942, of this Tribunal allowing the application , and to refer you to the Collector of Surat for refund of the amount, if any, that may be due to you.

Your obedient servant,

Sd/-F.H.Devitre,

For Secretary, Bombay Revenue Tribu
al

Accompaniment-Tribunal's order,

No.B.R.T.702(O-58).
Bombay Revenue Tribunal
Bombay Castle, 27th April 1942.

Copies, with copies of order, No. O-58 of 1942, dated 21st February 1942, of the Tribunal, forwarded to

The Commissioner, N.D., and Member, Bombay Revenue Tribunal,

Dewan Bahadur P.B.Shingne, Non-official Member, Bombay Revenue Tribunal,

The Collector of Surat (with the case papers),

The Government Pleaders, High Court, Bombay,

The Revenue Department (in continuation of the President's letter No. 6757-B/33/7342(B.R.T.'s order), dated 27th October 1941,

The Legal Department.

By order of the Bombay Revenue Tribunal,

Sd/- F.H.Devitre

S.C. for Secretary, Bombay Revenue Tribunal.

(with pps.)
Submitted for information.

Id/

P?A. Id/- 12-5-42

S.A.S. Id/-16-5-

A.L.R. Id/-Sd 18-5

D.S. Id/- Sd 18-5

R.L.A.

The decision in this case is of dubious legality and very unsatisfactory in as much as it raises far reaching implications which I should like office to consider.

Sec.7 of the B.R.T.Act 1939 enables the Tribunal to review its own decisions or orders. The word "own" is significient and would it seems imply ~~xhxx xhx~~ that the decisions of previous tribunals cannot be reviewed. In any case the present decision undermine finality which one usually associates with Tribunal decisions

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Application for review of order No.6757-B/33/7508, dated 15th February 1937.

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No. 4-58 of 1942.
Via poona, 21st February 1942.

Read.-

Application, dated 13th September 1940, of Nichhabhai Vallabhbhai Desai and two others of Vapi, mahal Pardi, district Surat.

Opinion, dated 3rd February 1942, of the Commissioner, Northern Division and Member, Bombay Revenue Tribunal.

Opinion, dated 15th February 1942, of Dewann Bahadur Shingne, Non-official Member, Bombay Revenue Tribunal.

Opinion, dated 21st February 1942, of the Govind Madgavkar, President, Bombay Revenue Tribunal.

O R D E R.

This is an application by (1) Nichhabhai Vallabhbhai Desai, (2) Bhagwanji V. Desai (3) Gulbhai V. Desai of Vapi, district Strat, for a reconsideration of the order of this Tribunal No. 6757-B/33/7342, dated 15th December 1937. Mr.G.K. Daftary of the Bombay Bar with Mr. Navalkar appears for the applicants and Mr. B.C. Rao, Assistant Government Pleader, for Government.

2. Put in a nut shell, the Collector, having in1933 given permission to the applicants to put four survey numbers to non-agricultural user on an assessment of Rs.40/- per acre, enhanced the rate in 1937 at the instance of the Commissioner to Rs.240/- per acre in the case of one survey number and Rs.270/- per acre in the case of the other three survey numbers with retrospective effect from the date when permission was originally given/ The applicant's application in 1937 against this order of enhancement was dismissed by this Tribunal as it wasthen constituted by its order No. 6757-B/33/7508, dated 15th December 1937.

3.

3. On 13th September 1940, the applicants filed the present application for a reconsideration of this order of the Tribunal.

4. A priliminary objection of jurisdiction is taken for Government on three grounds.

(1) the Bombay Revenue Tribunal as it is new constituted under Bombay Act XLL if 1939 is not competent to reconsider and review any orders passed by the Bombay Revenue Tribunal as it was previously constituted;

(2) even if such competence exists, no sufficient reason for review is made out as required by section 7 of the Bombay Revenue Tribunal Act XII of 1939;

(3) the application, having been made long after the 90 days, is barred by limitation under section 7(2) of this Act.

For the applicants, it is contended that,
(i) The Bombay Revenue Tribunal notwithstanding its altered constitution under the Act of 1939, is as competent as the Tribunal under its previous constitution and under

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the provisions of section 9 of the Bombay Act XII of 1939 to take over pending appeals and applications for revision and to exercise the same powers of revision under section 7 that the Tribunal under its old constitution could have exercised inrespect of its ~~non~~ orders;

(ii)there is "sufficient reason" shown for the exercise of the powers of revision, and

(iii) as under the limitation Act the Tribunal can excuse the delay for proper causeshown.

6. On the first question, this Tribunal possesses the same powers as it did under its old constitution under Government Notification, dated 1st April 1937, referred to in section 9 of Bombay Act XII of 1939. As a legal body its existence has not been interrupted. It follows both by virtue of section 9 of the Act(XII) of 1939 and on the ordinary canon of interpretation that the legislature intended no hiatus in the existence of the body and in the discharge of its functions and that the Tribunal as now constituted is as competent, if so advised, to reconsider and to review the decisions of the Tribunal in 1937 as it is in the case of its own decisions. 7 - Please see slip

8. The non-agriculatural rate of assessment of Rs.40/- per acre for Vapi and other villages was fixed in 1917 for a period of 30 years. In 1933, the appellants converted one survey No. 1108, measuring 1 acre 1 guntha to non-agricultural user and obtained a sanad in theusual form "M" (pp.23 of the Collector's file). This sanad expressly stipulated that the applicant was liable to pay an assessment at Rs.40/- per acre for 30 years from 1st August 1933. In regard to the other three survey numbers 243D, 261B, and 262A the appellants intended at a subsequent date to put them to non-agricultural user, but have never carried their intention into effect and have reconverted them since to agriculatural use. In regard to these, though no sanads were issued, a letter from the Collector, No. L.N.D.S.R.II-383, dated 16th March 1934,coupled with column 10 of the statement shows that the assessment at Rs.40/- per acre was also fixed for a period of thirty years. In the course of his inspection of the Collector's office in 1934, the commissioner thought that these rates were too low and asked the Collector to propose, under rule 82(IV) of the land Revenue Rules. higher rates for Vapi and to submit them for his sanction . The Collector did so, and obtained the commissioner's sanction to the rates of Rs.240/- per acre in the caseof survey No.1108 and Rs.270/- per acre in the case of the other three survey numbers, and communicated these rates to the applicants on 3rd February 1937. It is contended for the applicants that no notice such as the year's notice necessary under rule 82(III) and a fortiofi under rule 82(IV) was given to the applicants and the value on which the altered assessment was based was made, not by the Government surveyor but by panchas. Notice for the enhancement of rates retropectively from 1933 was served on the applicants in 1937. On receiving this notice the applicants applied to the Governer in Council in 1937 against this notice of enhancement of assessment. That application was sent for disposal to the Bombay Revenue Tribunal as then constituted. The Tribunal, without hearing the applicants, dismissed the application on 15th December 1937. No. demand was, however, made on the applicants till 8th August 1940.

9. It is contended for the applicants that the absence of hearing coupled with the absence of a demand for three years induced them to think that the matter was under consideration and is sufficient reason for the delay in their present application. It appears that in 1940, Government sent a proper officer to value the land and that he reduced the valuation

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to a figure appreciably lower than that of the panchas On 20th April 1940, a formal demand for the enhanced assessment with retrospective effect from 1933 was made on the applicants. On 8th August 1940, the Collector rejected the applicants objection to this demand. On 13th September 1940, they filed the present applic tion. It is on these facts that we have to decide whether his is a proper ca e for the exercise of our powers f review.

10. To the other element of consideration on this point it will be necess ry to refer. Su sequent to the former decision of 1937 of this Tribunal as then constituted, Government in their memorandum No. 6757-B/33, dated 12th May 1933, ordered that "when ~~xxxxxxxx~~ the Collector or other revenue officer has issued a sanad or agreement and the rate is subsequenly enhanced by the Commissioner or other Revenue officer under section 211, Land Revenue Code , the sanad or agreement issued by the Collector being cancelled, the enhanced assessment should ordinarily take effect from the next revenue year following the cancel. tion of the sanad or agreement," and that "all cases in which non-agricultural assessment has been levied with retrospective effect in such circumstances should be submi ted to Government for orders. If, in future, it is considered that in any particular case retrospective effect should be given, the case shoud be submitted to Government for orders."

11. The fact that the applicants were not heard by the Tribunal in 1937 is hardly proper ground for a review. No such right of hearing existed then or exists now. Some what stronger is the fact that though notice of enhanced demand was given in 1937 to the applicants, the demand itself was not made till 8th August 1940. The strongest ground for review ~~xx~~ is the Government memorandum, Revenue Department just quoted above which appears to be decisive on the question of a retrospective demand and in regard to the year from which the enhanced demand be made, and the valuation of the Government surveyor in 1940. The former order of the Tribunal does not consider exhaustively all the facts detailed abo e and particularly the bearing of the sanad and the agreement. Taken altogether we think that sufficient reason is m de out at least on the question of a retrospective demand for a review of the order of the Tribunal in 1937 within the meaning of ~~x xxxiax xx~~ the ~~xrdax xx~~ the Tribunal in rule 7 of the Bombay Revenue Tribunal Rules. It also follows that once the case is ope for review, it is not only permissible but it may even be necessary to consider the entire facts in all their aspects and the law applicable to the case.

12. In regard to limitation, we are of opinion that this Tribunal, like the civil courts, has the power to waive the bar of limitation in any exception case for proper cause shown. In the present case, considering the Government memorandum of 1938 the delay in giving notice of the enhanced rate, and the delay in the demand - all these are sufficient grounds why the bar of limitation should be waived and the present applic-ation considered on ~~hhe~~ the merits.

13. On the merits, the question is really one of law whether, as is argued for the ap licant , the rate of enhanced non-agriculatural assessment and the period of its duration must be fixed when permission to use agricultural land for non-agricultural purposes is granted and particularly when the rate and the period have been embodied in a final contract such as a sanad in the case of survey No.1108 and the latter of the Collector and the statement in the case of the other three survey numbers; or whether as is contended on behalf o Government the Commissioner under section 211 of the Land Revenue Code read with rule 82(IV) of the currency of the period in the sanad to enhance the rate. In previous decisions of this Tribunal we have pointed out the equitable considerations which should be borne in mind by revenue officers in the exercise of their wide - perhaps necessarily wide - powers under section 211 of the Land Revenue Code. These powers must not be exercised with a single view to the enhancement of the re enue, based on the rights of Government. They are not to be exercised arbitrarily b t with administrative discretion and fairness

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to all parties concerned, as in the case of judicial discretion exercised by the courts. The wide terms of section 211 of the Code and the absence of any period of limitation made these considerations not less but more incumbent onthe - officers, who exercise them. In the present case, it is to be noted that the Commissioner himself does not purport to have acted under section 211 of the Land Revenue Code. In actual fact, he was of opinion in the course of his tour and inspection that the rate at Vapi was too low and did not secure to Government its proper share of the value of the land and he, therefore, called upon the Collector to submit proposals under that rule when the Collector had made them. For practical purposes, therefore, section 211 has small bearing and application to the facts of the present case.

14. In regard to rule 82 which forms part of Chapter XIV, rule 80 refers to the powers of enhanced assessment on unalienated agricultural land when it is permitted to be used for non-agricultural purposes. Rule 81 lays down the maxium and minimum limits of the ordinary rates of altered assessment with the proviso in a clause (3) for a rate higher than the maxium in clause (2) in cases "where the land is either situated in an exceptionally favourable position, or where it is used temporarily for non-agricultural purpose for which it is used is of a special kind." Then follows rule 82 which is applicable to areas in respect of which there is a "keen demand for building sites or for any other special purpose" in which case Government decide and notify the applicability of the rule to the particular area and the standard rate, with the power under clause (IV) of rule 82 to the Collector, with the previous sanction of the Commissioner, to levy a higher rate, for reasons to be recorded in writing "in the case of lands situated in an exceptionally favourable position". It is under rule 82(IV) that the present enhanced rates of Rs.240/- and Rs. 270/- per acre purported to have been imposed by the Collector at the instance and with the sanction of the Commissioner.

15. The only other rule in the Chapter to which it is necessary to refer is rule 86-A "The altered assessment shall ordinarily be levied from the first day of the revenue year next succeeding the revenue year in which permission to use the land for non-agricultural purposes was given". As to the period under rule 87-A "the period for which the altered assessment is to be fixed shall ordinarily be thirty years from the date prescribed in the sanad...".

16. In the light of all these rules it is argued for the applicants that the collector having, when he gave permission for non-agricultural user, fixed a rate of Rs. 40/- per acre in 1937 and fixed it for a period of thirty years, it was not open to Government or the Commissioner during the currancy of this period of thirty years whether under rule 82(IV) or under section 211 to revise this rate ; It is contended for Government, on the other hand, that under the wide powers given under section 211 of the Land Revenue Code it was competant to the Commissioner to enhance the rate under rule 82(IV) and that, as to the period, the word "ordinarily" in rules 86 and 87 cover exceptional cases such as the present.

17. Reading chapter XIV of the Land Revenue Code as a whole, the argument for the applicants must in our opinion prevail. As already pointed out, section 211 has no bearing on the facts of the present case. Government has framed the rules in this chapter and Government alone can alter them. If the Collector had powers under these rules to fix a rate of Rs.40/- and for a period of thirty years and if he exercised this power as he did and concluded an agreement embodied in a sanad in the case of one survey number and a letter in the case of the other three survey numbers, then that agreement with all its terms is clearly and equally binding both on the Government and the applicants; and neither can vary it without the consent of the other party. If Government themselves have not then the power to enhance the rate after the Collector has once fixed it and has entered into an agreement, then a fortiori the Commissioner has not this power whether under section 211 of the Code or any other law. The rules read as a whole clearly lead up to continually enhanced rates of non-agricultural assessment according to the greater value of the land. But the power to fix the rate within the framework of these rules must, as the applicants rightly contend, be exercised when the application for non-agricultural user is considered and is granted. It is then that the Collector under rule 81 without the sanction of the Commissioner as in the present case or under rule 82(IV) with the previous sanction of the Commissioner must consider the class

7. On the second point, while the words "for any other sufficient reason" must be taken to be ejusdem generis, they are sufficiently wide to enable us to consider the case of each application on the merits. For this purpose it will be convenient at this stage shortly to review the facts of the case in their chronological order.

21. On this point we are bound by a decision of the High Court in the second appeal No.427 of 1939 with second appeals Nos.428 to 433 of 1939 (the Government of the Province of Bombay V. Messrs. Mathuradas Laljibhai Gandhi & Co.) decided on the 21st of July 1941. The High Court in that case observed.

"X X X The question is whether the Sanad, Ex.24, amounted to a agreement between the Government and the occupants and as such was not capable of being cancelled by the Collector of the Government before the expiry of the period of 50 years specified in the Sanad. The lower appellate court has held, differing from the trial court, that it is an agreement which is not capable of being cancelled before the expiry of the term, and I entirely agree with that conclusion. Whether the Sanad is taken to have been given under section 65 or under section 67 of the Land Revenue Code, the point would be the same.

"It is contended on behalf of the Government that under section 211 of the Land Revenue Code, it would be competent to the Government to modify the terms of the Sanad at any time. That argument is urged on the basis that the Sanad is tantamount to a decision of a revenue officer. But it has been recently held by the High Court in the Government of the Province of Bombay V Hormusji Manäji, letters Patent Appeal No.40 of 1938, that section 211 does not apply to such Sanads embodying certain terms and conditions agreed to between the Government and the occupants. I have no doubt that this is a correct decision and that it is not competent to the Government to modify the terms of the Sanad as it embodied certain terms and conditions which are agreed to between the Government and the Occupant. In that case the Sanad was issued under section 67. In the present case it is issued under section 65. ~~In the present case it is issued~~ but that would not make any difference as the principle is the same. I, therefore, agree with the lower appellate court in holding that the claim of the Government to enhance the non-agricultural assessment beyond what is fixed in the Sanad is not tenable.

22. In regard to the power of Government to make a retrospective demand, rule 85-A is decisive. It is impossible to accept the argument for Government that in the absence of any restriction or veto against a retrospective demand such ~~power~~ must be deemed to exist on the part of Government or its revenue officers. On the contrary in the absence of any such express power by legal enactment, and again on the ordinary canons of interpretation that a statute imposing liability on the subject must be clear and in case of doubt must be construed in favour of the subject we must uphold the contention of the applicants even apart from the Government memorandum of 1938 that the retrospective demand cannot stand in law. The word "ordinarily" in rules 86 and 87 give Government or the competent officer granting the permission for non-agricultural user, power to vary the period from which and for which the enhanced assessment is fixed; but the power must be exercised at the time the permission is given, not after it has once been given.

23. For these reasons, we allow the application and hold that the appellants are only liable to pay non-agricultural assessment at the rate of Rs.40/- a year from 1st August 1933. The applicants do not dispute this liability in the case of any of the survey numbers. The first survey number has been used for non-agricultural purposes and the other three have been reconverted to agricultural use and presumably are now liable to pay agricultural assessment. Any excess paid by the applicants over and above the rate of Rs.40/- per acre will be refunded to them.

Sd/-G.D.Madgaonkar,
President,
Bombay Revenue Tribunal.
Sd/-H.T.Sorley,
Commissioner, N.D. and Member,
Bombay Revenue Tribunal
Sd/-P.B.Shingne,
Non-official Member, Bombay Revenue Tribunal.

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Submitted with reference to the I.L.A. is note at p. 2 ante. In this case the B.R.T. has reconsidered the decision passed by its predecessor by its order No. 6757-B/33/7508, dated the 15-12-37. By that order the then Tribunal had dismissed the applicant's application made against the ~~applicant~~ order of the Collecter of Surat enhancing the rate of the levy of n.a.assessment ~~in~~ from Rs./- per acre to Rs. 240/- per acre in respect of one and Rs.270/- per acre in respect ofanother S.No. On behalf of Govt. it was urged in the present application that the Tribunal had no jurisdiction to entertain the application .-

1). as the present Tribunal is not the same Tribunal as was ~~mentioned~~ constituted by G.R.,R.D.No. 4877/33 d.-1-4-37. (cf. Sec. 7 of the B.R.T. Act, 1939).

2) as, even if it was presumed that the Tribunal had ~~a~~ jurisdiction to entertain the application, there were no sufficient reasons in this particular case for review, and

3). as the application had been made long after the period of 90 days prescribed by sec. 7(2) of the Act.

2. The B.R.T. has set aside all the arguments. The B.R.T.'s view on the first point is that it has the same powers as the previous Tribunal and its ~~a~~ existence has not been interrupted. Therefore it can review an order passed

by its predecessor. Under sub-section (1) of sec. 7 of the B.R.T. Act 1939, the B.R.T. can however review its own decision. The present Tribunal is not the same Tribunal as was constituted by G.N.R.D. No. 4877/33, d/- 1-4-1937. Moreover the Tribunal is a creature of law and as observed by the R.L.A. in para. 5 of his opinion only such powers as are conferred on it under the B.R.T. Act under which it was constituted. Sec. 7 of the Act will therefore have to be strictly construed. The B.R.T. relies upon Sec.9 of the Act. That Sec. abolishes the previous Tribunal and provides that all appeals and applications for revision pending before it shall be deemed to have been instituted before the present Tribunal. Thus sec.9 only provides for the disposal of pending applications or appeals and nothing else. It cannot be relied upon, as the B.R.T. has done in para. 6 of the order, to draw any further conclusion.

3. The next point is about the competency of the Tribunal to entertain the application under the first provise to sub-section (1) of Sec. 7. Under that provision, such application could not be entertained unless there was a discovery of new and important matter of or evidence, or there had been some mistake or error apparent on the face of the record or for any other sufficient reason. The B.r.T.'s view is that though the words "for any other sufficient reason" must be interpreted ejusdem generis, they are wide enough to enable it to reconsider the case on merits. This argument cannot be understood. If these

words are to be reas "ejusdem generis" then the circumstances which could enable the B.R.T. to entertain this application should be such as beleng to the same genus as the discovery of new and important evidence or thediscovery of some mistake or error apparent on the face of the record. It does not therefore appear how an application could be considered on the individual merits.

4. The last point is about limitation. The Tribunal observes (para. 12 of its order) that like civil courts, it has the power to waive the bar of limitatimn in any exceptional case for proper cause shown. The Tribunal is not a civil court and has not the powers of the Civil court. It cannot therefore claim to exercise the inherent powers of the civil courts in similar circumstances. As stated in para. 2 above, the powers of the Tribunal are strictly governed by the provisions of the B.R.T. Act, 1939.

5. Thus the order passed by the B.R.T. does not appear to be legal. The B.R.T. claims to have all the powers of a civil court. It is not however a civil court and R.L.A. has expressed this view all along. As stated in para. 5 of the R.L.A.'s opinion No. 3025 d/- 3-4-41, it can only exercise those powers which are conferred upon it by the provisions of the B.R.T. Act, 1939. Sec. 6 of the Act makes all orders passed by the B.R.T. in the exercise of the its powers of appeal or revision final and for this reason it is absolutely necessary t

that the Tribunal exercises its power strictly in accordance with the Act which has constituted it. The Tribunal in this case appears to have exercised powers in excess of these conferred by the B.R.T. Act. Perhaps it would be necessary to amend the provisions of the Act so as to clarify the position. It is for consideration whether this point should be brought to the notice of the R.D.

Sd/15-6

Pl. put up Govt. notification (R.D.) No. 4877 dated 1-4-1937 by which the old Revenue Tribunal was constituted.

Sd/11-6

The Notification will be found at pp. 31-32 of the Sanad Suppl. to the L.R. & O. K.II ( put up)

I think the view taken by the Revenue Tribunal on the first question is correct.

2. Section 18(1) of the Bombay General Clause Act, 1904, provides that in any Bombay Act made after the commencement of this Act it shall be sufficient, for the purpose of indicating the relation of law to the successor of any functioneries or of corporations having a perpetual succession, to express its relation to the functionaries or corporations. Section 9 of the Bombay Revenue Tribunal Act, 1939, clearly provides for the abolition of the Bombay Revenue Tribunal constituted by Govt. Notification (R.D.No. 4877/33 dated the 1st

April 1937 and disposed of pending cases. Consequently the Bombay Revenue Tribunal created under the Bombay Revenue Tribunal Act is a successor of the Bombay Revenue Tribunal constituted by Government Notification of 1937. Under rule 10 of the Rules prescribed by the old Revenue Tribunal go govern its procedure the power to review its own decisions. A similar power vests in the new Revenue Tribunal under section 7(1). What the old Revenue Tribunal could do can be done by the new Revenue Tribunal as its successor. The fact that section 9 provides for pending appeals applications for revisions would not preclude power to review the order passe by the old Revenue Tribunal. The view taken by the Revenue Tribunal on this point appear to be correct.

2. Onthe point of limitation the view taken by the Revenue Tribunal does not appear to be quite correct. Statutes of limitation have to be construed strictly (Maxwell p.250). Sub.section (2) of section 7 specifically provides that an application for review under sub-section (1) by any party shall be made within 90 days from the date of the decision or order of the Tribunal. Under the proviso thereto in computing the period of limitation the provisions of the Indian Limitation Act, 1908 are applicable to applications for review under this section. This means that the provisions under Part III of the Indian Limitation will apply so far as they are applicable. The power to condone delay

vest in the civil court under sec. 5 in Part II. The Bombay Revenue Tribunal is not a civil court. Consequently it appears that the Revenue Tribunal has no power to entertain an application for review after the expiry of the period of 90 days.

4. On the third question regarding the validity of the order of the Commr. cancelling the sanad granted by the Collr. fixing the non-agricultural assessment for a period of thirty years I think the view taken by the Revenue Tribunal is correct. It is supported by the decision of the Bombay High Court in Government of Bombay vs. Mathuradas Lalbhai (XLIV B.L.R. 405).

Sd/ 27-6

Question 1.- I agree with ASD view. Section 296(2) of G of I Act 1935 is inserted in the interpretation. That section compels the setting up of a functionary to exercise in revenue case such powers as were vested in the Local Govt. prior to 1-4-37. The first tribunal which was constituted by the Government notification was such functionary. It was then abolished and replaced by the present tribunal constituted under a Provl. Act. The Act cannot but intend that the tribunal if set up and be vested with all the powers of Govt. as required by s. 296(2) (cf. 5 of the Bom. Rev. Trib. Act 1939).

Govt. possessed full powers of reviewing decision in all revenue case Those powers therefore pass to the functionary appointed under sec. 29602), i. they passedto the first tribunal and tereupon to the present tribunal. No power is review is retained by Govt. itself. I agree therefore that sec. 1 of the Bom.Gen.ClAct. should be considered as having application in the presen case, and sec. 7 of the B.R.T. Act construed accordingly. Otherwise, where the defunct tribunal has passed patently bad an unjust order in appea or revisi n, and the tribunal became defunct before it could review that order, no ~~functiary~~ functionary would be left to review that order, and in view of sec. 296(2) the Provl. Govt. would be debarred from reviewing it too).

I also agree with AS on question 2 and 3.

Sd.
2-7

R.L.A.

I am very doubtful about the application of sec. 18 of the Bom. Gen Cl. Act.But that apart, I should like office to examine whether the ~~xx~~ prese Tribunal was legally entitled to revie the case for "any other sufficient reas when as a matter of fact the old Tribu was not imposed to review forany other sufficient reason " Under the Bom.R Tribunal Rules 1937 the tribunal had n power to entertain an application for review of its decision unless it

it was satisfied that (1) any new matter requiring special consideration had been disclosed or (2) the decision has been vitiated by material illegality or irregularity. Had the old tribunal been still in existence the applicants would clearly not have been entitled to apply for review on the facts alleged. I take it that in a case decided by the old tribunal, the present tribunal had only be entitled to exercise the same powers of review as the old tribunal had under its constitution. The question of condoning limitation also requires further examinations. This is to my mind an erroneous judgment requiring careful examination before it is acquiesced in.

Will office reconsider from all angles and submit through As, SAS, AIR, & DS.

Sd
18-7

S.C.
$c.
5-5.

/Resubmitted with reference to R.L.A.'s note at pp. 17-18 ante. The first point for consideration is whether the Tribunal was legally entitled to review the cases for "any other sufficient reason". In para 7 of the order the Tribunal observes that w while the words "for any other xx sufficien reason" in sec. 7 of the B.R.T. Act, 1939 must be taken to be ejusdem generis, they are sufficiently wide to enable it to consider the case of each application on the merits. In para 6 the Tribunal admits that it possesses the same powers as it did under its old constitution under G.N.,R.D. No. 4877/33, dated 1-4-1937. Assuming for the sake of argument that the present Tribunal is the successor of the Tribunal of 1937, it does not appear it can exercise powers wider than those vesting in the old Tribunal. So far as this case is concerned, the B.R.T. could therefore exercise only those powers which the Tribunal of 1937 possessed. Actually, as admitted by the Tribunal itself, it has exercised power conferred by the proviso to section 7 of the B.R.T. Act, 1939, for the purpose of deciding the application. It is true that both the Tribunals were constituted for entertaining appeals and revising decisions in revenue cases. (Vide G.N.R.D.No. 4877/33,dated 1-4-1937 and section 4(1) of the B,R.T. Act. But Rule 5 of the B.R.T. Rules of 1937 provided that the Tribunal should not entertain applicati on for review of its own decision or order unless it was satisfied that -

S.C.
4 c. 5-5-

(1) any new matter requiring special consideration of the case had been disclosed; or

(2) the decision or order had been vitiated by some material illegality or irregularity.

Thus the TRibunal constituted in 1937 could entertain an appeal only under the above two circumstnaces. It is clear from the order at p.3 ante that the review application was not entertained for any of the above reasons but for some other reason which the Tribunal thought was a sufficient reason. Thus the Tribunal while pro-fe sing to act as the successor of the Tribunal constituted in 1937 has actually exercised powers beyond those which if the old Tribunal had been in existence it could not have exercised. Even if it is conceded therefore that the present Tribunal is the legal successor ofthe one constituted in 1937, it was not legally competent to review the case for any other sufficient reason. The view expressed by the R.L.A. on this point is correct.

2. The next question is about limitation. Under sub-section (2) of sec.7 of the B.R.T. Act an application for review by any party is required to be made within ninety days from the date of the decision or order of the Tribunal. Under the proviso to that sub-section, in computing the period of limitation, the provisions of the Indian limitation Act, 1908, applicable to applications for review of a judgment or order of a civil court shall, so far as may be, apply to such applications for review. In this connection, the Tribunal observes in para.12 of its order that it has the powers like the civil courts, to waive the bar of limitation in any exceptional case & for proper cause shown. Under section 5 of the limitation Act, 1908, an application forreview may be admitted after the period of limitation prescribed therefor, when the

S.C.

applicant satisfies the Court that he had sufficient cause for not making the application within such period. It is true that the B.R.T. is not a civil court, but the principle underlying section 5 seems to have been specifically applied in the case of the B.R.T. by the proviso to sec.7. A court is bound to consider whether there was sufficient cause for extending the period of time (vide Chitle & Rao's Limitation Acts Vol.I p.315). The B.R.T. considers, that the Govt. memo. of 1938, the delay in giving notice of the enhanced rate, and the delay in the demand are sufficient grounds for waiving the bar of limitation. What constitutes "sufficient cause" will have to be determined by a reference to the circumstances of each particular case (Hussaini Begum vs. Collector, 9 All. 11, Mitra's Limitation Act, p. 47, 12th Edn.) The view taken by the B.R.T. on this point thus appears to be correct.

ID/ 24/7

As.

Please put u. R.D. Memo No. 6757 dated 12.5.1933 with subsequent orders if any on the point.

ID/

4-8

Resubmitted,

ID/-

S.C.
4 C. 5-5-

The first question for consideration is whether the application of Vallabhai Desai and others which was entertained by the present Revenue Tribunal could have been entertained by the old Tribunal Rules under rule of 1937,

2. Under rule 5 of the B.R.T. Rules of 1937 and old Tribunal had power to entertain an application for review of its own decision or order if it was satisfied that -

(1) any new matter requiring special consideration of his case had been disclosed, or (2) the decision or order had been vitiated by some material illegality and irregularity.

An "irregularity" is a want of adherence to some prescribed rule or mode of preceeding and consists in omitting to do something that is necessary for the due and orderly conducting of a suit or doing it is an unreasonable time or improper manner. An "illegality" on the other hand is properly predicable of radical defects only, and signifies that which is contrary to the principles of law as distinguished from mere rules of procedure. It denotes a complete defect in jurisdiction or proceedings (see Iyer s law Lexicon p.544). "In one sense every decision or order is illegal; in another no judicial order is illegal" even though it may call for reversal or amendment which is within the general competence of the judge who makes it. What probably was meant an obvio sly perverse use of jurisdiction or authority which could not be justified even on premises assumed or found by the judge, or else, some palpable transgression of rule in the collecter of the premises, an error ineither case not admitting of reasonable question. Such an error undoubtedly warrants the interference of the Court in revision." (See 7 Bom. 341 at pp.358-359). The present Revenue Tribunal has intefered with the decision of the old Revenue Tribunal on the ground that the former

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order of the Tribunal did not consider exhaustively all the facts of the case and particularly the bearing of the sanad and agreement and that sufficient reason was made out at least on the question of a retrospective demand for a review of the order of the Tribunal in 1937 within the meaning or rule 7 of the Bombay Revenue Tribunal Rules. In this connection the Tribunal relies on the R.D. Memo No. 6757-B/33 dated 12.5.1938 which states: "when the Collector or other revenue officer has issued a sanad or agreement guaranteeing a certain payment or non-agricultural assessment and the rate is subsequently enhanced by the Commr. or other revenue officer under sec. 211 of the Land Revenue Code, the sanad or agreement issued by the Collr. being cancelled the enhanced assessment should ordinarily take effect from the next revenue year following the cancellation of the sanad or agreement. All cases in which non agricultural assessment has been levied with retrospective effect in such circumstances should be submitted to Govt. for orders. If, in future, it is considered that in any particular case reconsidered effect should be given, the case should be submitted to Govt. subsequent to the order of the old Revenue Tribunal in the present case. It cannot therefore be argued with any justification that that an order of the Tribunal was tained by any irregularity or illegality in that it omitted to take into consideration the contemplated orders of Govt. The only point which remains to be

considered is whether the order of the old Tribunal could be said to be tained by any material irregularity or illegality in that it did not consider whether the Collr. was justified in revising the terms of the sanad under section 211 I.R.C. In the Govt. of the Province of Bombay vs. Hormusji Manekji (1940, Letters Patent Appeal No.40 of 1938) it was held that section 211 L.R.C. did not apply to sanads under section 65 or section 67 embodying terms and conditions agreed to between the Govt. and the occupants. Following that decision Divatia J. in the Govt. of ombay vs. Mathuradas Maljibhai Gandhi (44 B.L.R. 405) has held that where a sanad is issued for a term of years under section 65 of the Bombay Land Revenue Code on the basis of an agreement between Govt. and an occupant charging a certain amount of assessment for the permitted non-agricultural user of the land, it is not open to Govt. to levy enhanced assessment during the period of the sanad. The Advocate General has opined that the decision of the High Court is not quite correct in that the document issued in respect of the levy of non-agricultural assessment is not in the nature of a "saned" and consequently there is no reason why section 211 L.R.C. should not apply to such documents. Apart from the validity or otherwise of the aforesaid rulings of the Bombay High Court, it is clear that where these decisions are of a date subsequent to the decision of the old Revenue Tribunal. Consequently it could not be ~~xxxxxxx~~ contended that the decision of the old Revenue Tribunal was illegal or irregular because subsequently the High Court took a different view. In the circumst nces it is possible to argue that the new Revenue Tribunal wrongly assumed jurisdiction and revised the order of the old Tribunal It appears however, that there is eno remedy since the Revenue Tribunal may not consent to review its

S C.

order under section 7 of the Bombay Revenue Tribunal Act, 1939. The proper course appears to be to wait the decision of the High Court in the Letters Patent appeal filed in an advise of the Advocate General about campet ncy ei otherwise of Govt. to revise such sanads under section 211 L.R.C.

Sub-section (2) of section 7 of the Bombay Revenue Tribunal Act provides that an application for review under sub-section (1) by any party shall be made within 90 days fro the date of the decision or order of the Tribunal. The provise thereto lays downthat in computing the period of limitation the provisions of the Indian Limitation Act, 1908 applicable to applications for review of a judgment or order of a Civil Court so far as may be applied to applications for review under this section. Section 29(2) of the Indian Limitation Act provides "Where any special or local law pre-scribes for any suit appeal or application a period of limitation different from the period prescribed therefor by the first schedule the provisions of sectio 3 shall apply as if such period were prescribe therefore in that Schedule and for the purpose of determining any period of limitation prescr bed for any suit appeal or application by any special or local law.

I do not t ink this argument is sound. The correspodding ar icle of the limitation Act would be article 173 and the period prescribed is also 90 days. Sec. 29(2) would not therefore apply.

(a) the prowvisions contained in section 4, sections 9 to 18 and section 22 shall appl only in so far as, and to the extent to which they are not expressly exâluded by such speci or local law; and

(b) the remaining provisions ofthis Act shall not apply. By virtue of this pre-

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vision section 5 which provides for condoning
delay for sufficient cause does not apply to
special or local laws unless such special or
xx xx local laws expressly or by necessary implication
make it applicable to applications under that
law (See Chitaley's Limitation Act Vol.I p.268).
The Bombay Revenue Tribunal is a special law
and it does not expressly or by implication make
section 5 of the Indian Limitation Act applicable
to applications for review. Consequently the view
taken by the Revenue Tribunal onthe point of
limitation is not correct.

S.R.S.

In my opinion the view taken by the Tribunal
on the first xx question that it xhad the powerto
entertain the application for review in respect of the
order passed by the old Tribunal is not correct.
Tribunal is constituted under the Bombay Revenue
Tribunal Act and it cannot exercise any power or exercise
any jurisdiction which is not conferred on it under the
Act. The power to review decisions or orders is conferred onthe
Tribunal by sec.7(1) of the Act. Under this section
the Tribunal can review only <u>its own</u> decision or order.
The two Tribunals xxx xxxiax e namely the Tribunal appointed
by G.N.,R.D. NO. 4877/33, dated 1st day of April 1937 is not
the same as the Tribunal constituted under the Act. In
law these are two different bodies. This is clear from
the provision in sec.9 itself which provides for the
abolition of the old body and for power to hear pending
appeals and applications by the new body. A decision or order,
therefore, passed by the old body cannot be held to be a decision
or order of the new body. Section 7(1), therefore, does not em-
power the present Tribunal to -
review the decision or order of the xx old Tribunal.
There is nothing inany of the provisions of the Bombay

Revenue Tribunals Act which confers expressly or by implication this power on the Tribunal. The intention of the Legisla ure has to be gathered from the language of the provisions of the enact ment as they stand. It is not co petent to spec culate. It is clear from the language of the provisions in this case that the Legislature did et consider the question of providing for review in such cases.

Else, such a provision would have been ~~xxxiii~~ easily included in the Act.

2. It is true that section 296 (2) requires the setting up of a tribunal by the Governor to exercise the jurisdiction mentioned in the secti is to en-tertain appeals or revise decisions in revenue cases, which vested in the local Governm The Tribunal is to be set up until other provision is made in that behalf by as Act of the Provincial Legislature. This section, no doubt, contemplates that there should always be a tritunal to exercise jurisdiction to entertain appeals and revise decisions in revenue cases. There should be a Governor's tribunal until the Legislature provides for the constitution of a tribunal under an Act. It does not follow from these provisions that the tritunal constituted under the Act is the same as the tribunal appointed by the Governor. I do not think that the tri unal constituted by the Governor had powers to review orders passed by the Local Government before the constution of the Tribunal. Under rule 5 of the Bombay Revenue Tribunal Rules, it could review its own decision or order only. Likewise I do not think that the present tribunal has power

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eview the decision of the Tribunal ~~was~~
~~was entitled to exercise~~
appointed by the Governor.

I do not think that the provisions of secion 48(1) of ~~the~~ Bombay General Clauses Act have a bearing on this question.

3. Inthe view taken by me on the first question, ~~a~~ section 7(1) of the Act has no application to the present case and the Tribunal was not entitled to review the decision by the old Tribunal "for any other sufficient reason, under this section and exercise a power which even the old tribunal did not possess.

4. On the pointof limitation , I agree with Mr. Katarki's view at pp.15-16 ante.

5. I also agree with the view taken by Mr. Katarki in para. 4 of the note at page 16 ante as regards decision on merits.

Sd/

A.L.R.

If the Tribunal is to be regarded as the heir of all the Govt.'s powers, then it had power to review the decision for any sufficient reason. But in the Act its powers are expressly limited (see section 7) and under the Notification, the first Tribunal had even more limited powers. It is clear that the old Tribunal would not have had power to entertain this application and this ~~xxxx~~ appears to have been a point that was not considered. The judgment says that the present tribunal possesses the same powers as the old tribunal. That statement is hardly to the point. The point is that the present tribunal has greater powers of review and it is only by virtue of its greater power ~~of review and it is~~ that it could, if at all, consider the present application. The question is whether the present tribunal can exercise its extra powers of revision with regard to a decision of the old Tribunal. I should be

inclined to say "no" but I think the point is doubtful. However, the chief objection to this part of thejudgment is that there is no consideration at all of this important point.

2. The question whether the present tribunal can review at all decisions of the old tribunal appears to me doubtful. The two views that are urged in these notes are both arguable and I would not be prepared to say that the Tribunal is wrong, although again their consideration of thispoint can hardly be called searching and full.

3. The next point is whether the present case falls within the words "or for any other sufficient reason". This, I think, is the weakest partof the judgment. D.S' phrase "bad and unjust decision " ought to serve as a clue, I think, to the meaning of the words "or for any other sufficient reason". By that I take bad to mean wrong in law or irregular inprocedure, and unjust in a case like the present as causing the pecuniary loss unjustly. Let it be assumed for the moment that the Commr. had no power to revise the Collr. order fixing the rent and further that he ought not g to have enhanced the rate with retrospective effect. On tese two grounds, therefore, the Commr.'s order would be not only merely wrong but also invalid. The old Tribunal however confirmed that order. The Tribunal had the power to confirm it and its order of confirmation is not invalid because the order confirmed is invalid. The old Tribunal may have made a mistake. But a Court has jurisdiction to

S.C.

make a mistake, to decide wrongly, to decide that a wrong order as right and an invalid order valid (see the Privy Council Case, 25 Bom.337). Before the Tribunal interferred with such an order in review it ought to be convicted not only of the wrongness of the decision, but only of the wrongness of injustice of the decision. In the present case that would mean that the applicant had been charged an unfair price for the non-agricultural use of the land. Was the Collr. rent or Commr. rent the fairer? There seems to be no consideration of that question in the judgment The judgment confines itself to consideration of the Commr.'s power to revise the rent and the date from which he ought to charge the revised rent. The Tribunal's decision may have been had in law, but there seems no evidence at all to establish that it was unjust, that is to say, that the applicant was asked to pay more than a fair rent for the land. I do not therefore think that this was a case for review.

4. Regarding the point of limitation raised by the S.A.S. on pages 25 and 26 I have made a note in the margin. S.A.S. now seeks to support his view by arguing that section 5 of the limitation Act is expressly excluded by section29 of the Limitation Act. But I do not think that that argument is sound and I think his opinion on limitation must therefor be based only on his first note of 27/6. I agree with him that the limitation Act except as regards the previsions regarding the computing the period of limitation, is not applicable to the proceedings of the Revenue Tribunal. But the Tribunal says that it has a right apply the principle of section 5. It is true that the Tribunal is not a Civil Court, but it is

a Revenue Court, and I can sympathise with it in claiming the power to excuse delay in filing an application. Apart from the provisions of law, there seems no reason why a civil Court should possess that power and not a Revenue Court. There is often as much as stake for the litigant in a Revenue Court as in a Civil Court. Although, t ~~there is often as much a stake for the litigant in a Revenue Court as in a Civil Court~~ therefore, the Tribunal may be strictly, speaking, wrong in its view, I think it is a view in which Government should acquiesce. Would Govt. think of enacting specifically that the Tribunal should have no power to excuse delays? Govt. might seek to fetter the Tribunal's discretion in this matter, but I do not think that it would go so far as to forbid absolutely the exercise of that ~~rig~~ right. And that I tink might serve as a test whether or not to object to this part of the judgment.

4. I do not think we need concern ourselves with the question whether the Tribunal in this particualr case exercised its discretion wisely or not.

Sd/ 22-9.

I have fully reconsidered the case and with great respect my submission is as follows.-

2. On the point of Limitation, I agree with Mr. Palekar and Mr. Katarki. Since a specific provision appears in section 7(2) of the Bombay Revenue Tribunal Act, 1939, it constitutes a special law of limitation for all purpoges and thereby attracts section 29(2) of the Limitation Act, 1908,

S.C.
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constitutes a special law of limitation for all purposes and thereby extends so as to include exclude the operation of section 5 of that Act. This should be pressed on the Tribunal's notice when a similar point next arises.

3. On the merits I feel so doubtful of the correctness of the decision in 44 B.L.R. 405 that I should resile from the position I previously took. But I agree with Mr. Katarki that the proper course now is to await the decision of the High Court inthe Letters Patent appeal filed on the advise of the Advocate General to get the doubtful point settled.

4. As regards the Tribunal's jurisdiction to review with reference to the expression " for any other sufficient reason" appearing in the first proviso to sub-section (1) of section 7 of the B.R.T. Act, I am of the view that a equally full powers of review" for any other sufficient reason" vested in the B.R.T. constituted under G.N. R.D. No. 4877/33 dated 1.4.1937. That is a statutory notification under section 296(2) of the Government of India Act, 1935, and transfers to the Tribunal in full the powers of Government for the purpose of entertaining appeals and revising decisions in revenue cases. The word "revising" must be held to include reviewing as otherwise even the limited power of review, whether given by the B.R.T.Act or by the B.R.T. Rules 1937, would be ultra vires of section285 of the G. of I. Act 1935.. If revising therefore includes reviewing, the powers under section295(20 were fully transferred to the original Tribunal and are equally fully transferred to the new Tribunal in view of sec

5 nd 4(1) of the B.R.T. Act. As regards the language of rule 5 of the B.R.T.Rules 1937, G.N.R.D.No. 4877/33 dated 8. .1937, that can in no way be taken to mean that the Tribunal did not receive all the powers of Government under notification constituting it under section 295(2) of the G. of I Act. The language can only mean that the Tribunal had full powers of review but set a limit to the exer-cise of those powers ~~maximum~~ but for its own convenience and by its own volition. This is abundantly clear from the fact that the B.R.T. Rules 1937 are not statutory rules but only procedural rules framed by the B.R.T. itself for its own co venience.

5. As regards the jurisdiction of the present Tribunal to review the orders of t the old Tribunal is relation to section 7(1) of the B.R.T. ACt which enables it "to review its own decision or order in any case", I agree that on a strict construction "its own" cannot mean the fore er Tribunal's as the two Tribunals are distinct functionaries. I however submit that section 5 of the B.R.T. Act ought to construed more liberally along with sectio 296(2) ofthe G. of I. Act . I had urged in this point at "A" ,onpage 16 and I urge it again.Section 6 and section 4(1) give the Tribunal and full powers of revising decisions under section 296(2) of the G. of I. Act. and this normally in cludes the full powers of Government to review. Sec.7 may therefore be construed as putting a limitation onthe Tribunal's

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review ofits own orders but not putting a limitation onthe Tribunal's review of any other functionaries" orders under any other section of the Act, namely under sections 5 and 4(1). This view appears to me to be legally con entent to take, as on any other basis L.D. will be compelled to advise Govt. that a certain residue to cases of the nature of Revenue cases requiring review are still left out of the jurisdiction of the pres nt Tribunal and that therefore Govt. is bound to set up another Tribunal for the disposal of such cases as required by section 296(2) of the G. of I Act. The duty to set up a Tribunal for deciding all revenue cases without leaving any residue is mandatorily cast on the Governor under section 195(2). This consequence can however be safely avoided by taking the Tribunal's power under section 5 and section 4(1) of the B.R.T. Act to include a power to review any decision or order in a revenue case in the same way that the decision or order could have been reviewed by the local Government before part III of the G. of I. Act commenced. It is x in this sense that I urge further that the words "its own" in section 7 may be liberalised and interpreted to mean the former Tribunal's. The local Govt. before the commencement of Part III of the G. of I. Act, exercised certain power in revenue cases as specified insection 296(1) These powers were transferred in full to the Tribunal constituted under G.N.,R.D.No.4877/33 dated 1.4.1937 and were exercisable by that Tribunal until other provision in that behalf was made by an Act of the Provincial Legislature. The

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Provincial Legislature made the B.R.T. Act, 1939 in that behalf and constituted a statutory Tribunal to exercise those very powers wh which originally were exercised by the Provincial Government. It thus appears that the same functions were exercised in succession by the Provincial Government, the Government, Tribunal and the statutory Tribunal . In a sense, therfore, this is a su succession of functionaries and "its own" in section 7 of the B.R.T.Act may be reasonably construed accordingly. In any way from section 5 or section 4(1) of that Act. It seems desirable therefore for L.D. not to challenge the Tribunal's assumption of jurisdiction in this case to revise the order of its predecessor, the Governor's Tribunal.

Sd/ 23-9

R.L.A.

The position is most unsatisfactory and it seems to me that the B.R.T. Act and Rules will have to be amended some time or other. For the present the Tribunal's decision may be acquiesced.

Sd/ 20-0.

No. 6757/B/33.
Revenue Department.
Bombay Castle, 12th May 1938.

Subject.-Non-agricultural Assessment.
Levy of ...with retrospective effect.

MEMORANDUM.

The undersigned presents compliments to the Commissioner, N.D. / C.D. / S.D., and is directed to state that when the Collector or other revenue officer has issued and sanad or agreement guaranteeing a certain payment of non-agricultural assessment and the rate is subsequently enhanced by the Commissioner or other revenue officer under section 211, Land Revenue Code, the sanad or agreement issued by the Collector being cancelled, the enhanced assessment should ordinarily take effect from the next revenue years following the cancellation of the sanad or agreement.

2. It is requested that all cases in which non-agricultural assessment has been levied with retrospective effect in such circumstances should be submitted to Government for orders. If, in future, it is considered that in any particular case retrospective effect should be given, the case shouldbe submitted to Government for orders.

By order of the Governor of Bombay,

Sd/ M.T.Vartak

for Deputy Secretary to the Government of Bombay, Revenue Department.

Copies to.-

the Commissioner of Excise,
The Accountant General,
the Finance Department.

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L.D.

R.I.No. 10768 dated 14.10.42.

Submitted with pps. (O.B.R.C./42).

(Id) N.N.N.
14.10.42.

S.A.C.

418-confl. dated
23.9.1942.

The procedure suggested in Secy. L.D.'s note may be agreed to. Presumably it will be embodied in an order a copy whereof will be communicated to the C.P.High Court.

Id. B.G.H.
15/10

D.S.

Id. P.K.D.
15/10

Secy.

Id. P.N.M.
17/10

U.R. to R.D. No. 454 Confl. dated the 19th October 1942.

S.C.
4 copies 7-5-

Statement

1. The appellants Nos.2 and 3 and the father of the appellant No.1 applied on 6.9.1934 for permission to use 20 gunthas of their S.No.952 for non-agricultural use of preparing bricks andmaking a brick kiln. This application refers, to the digging up of barajali shrubs in the whole S.No. for improvement for agricultural purposes and to the use of 12 gunthas for a brick kiln and 8 gunthas for drying bricks. But their statements before the Mamlatdar on 13.10.193 4 and 10.12.1934 show that they agreed to dig earth in 12 gunthas only anduse 8 gunthas for the vrick kiln and that the bricks would be made for house-hold use. Ihey did not say that the whole S.No. was to be dug up to clear slrubs. Under the circumstances the permission granted by the Assistnat Collector by his Be. L.N.D., date( 19.1.1935 only refers to non-agricultural use of 20 gunthas of land out of S.No. 952 and Sanad in Form No.1 was accordingly granted. Permission sought and obtained fr( the Assistant Collector shouldbe strictly construed interms of the order and the Sana( for the non-agricultural use of 20 gunthas land only. If the appellants used a larger area for purposes unconnected with agricult( re it cannet be said to be with permission of the Collector, and the Collector is authorised to levy fine under section 65 of the Land Revenue Code and the rules 99 to 103 of the Land Revenue Rules.

&C.
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7-5-

2. The land in suit was in fact a farmed out on contract for the making of bricks and large areas of the S.No. were excavated from year to year, making a total 10 acre and 18 gunthas shown as under

Collector's letter No. L.N.D. 1/37 date 9.6.42.

| | Area A | G. |
|---|---|---|
| 1935-36 | 2 - | 0 |
| 1936-37 | 2 - | 18 |
| 1937-38 | 6 - | 0 |
| | 10 - | 18 |

The above areas are exclusive of one another. The excavation was 3 feet in depth and adversely affected the fertility and the value of the land. The land fetched Rs.60/- per annus rent formely while now it fetches a rent of Rs.32-8-0

3. The manufacture of bricks was on a large commercial basisandthe total yearly out put of bricks was 9,13 and 21 lacs in the years 1935-36, 1936-37 and 1937-38 respectively. In fact a profit of Rs. 3000/- in 3 years is made the business. The fine levied by the Collecter under the circumstances is not excessive.

4. It is submitted that the order of the Collector in question No.L.N.D. 1/37 dated 31.1.1941. is lawful andcorrect and the discretion of the Collector in the levy of fine should not be interfered with. It is submitted that the use made by the appellants of land other than 20 gunthas out of their S.No. 952 is unauthorised and without the permission of the Collecetor and is malafide as seen from the continuous course of conduct of the appellants.

Id/ 10-2

R.L.A. 3d/12-12

S.C.

4 Copies 7-5

Office of the R.L.A.

It is not necessary x in a case of this nature to submit a formal written statement as in a suit, but a statement of the case of the Government justifying the order be submitted by the Secretary, Revenue Department to the President, Bombay Revenue Tribunal. The necessary statement is appended herewith.

Sd/ R.T.K.

for Remembrancer of Legal Affairs.

U.R.to R.D.No. 10013, dated 15th December 1942.

S.C.
4 Copies 7-5-

Office of the R.L.A.

On a reference from the President of the Bombay Revenue Tribunal. the Remembrancer of Legal Affairs has already given his own opinion on this very matter. The Collector's order is held competent and correct under rule 5 of the Resumption Rules.

Sd/-

for Remembrancer of Legal Affairs.

U.R. to R.D.No. 10055 dated the 16th December 1942.

S.C.
4 Copies
7-5-

Office of the R.L.A.

On a reference from the President of the Bombay Revenue Tribunal. the Remembrancer of Legal Affairs has already given his own opinionmm on this very matter. The Collector's order is held competent and correct under rule 5 of the Resumption Rules.

Sd/-

for Remembrancer of Legal Affairs.

U.R. to R.D.No. 10055 dated the 16th December 1942.

S.C.
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